IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.2 OF 2003

Shri.Manik Dyandeo Gore ..Applicant
(Orig.Judgment Debtor No.12)

V/S.

1. Dajiram Vithoba Gore & ors. ..Respondents
(Orig.plaintiffs)

Ms.Manjiri Parasnis, advocate with G.S.Godbole for applicant

Mr.Makrand A. Utgikar, advocate for the respondent No.1

CORAM : D.G.KARNIK, J.

DATE : 27TH SEPTEMBER, 2006

ORAL JUDGMENT

1. Heard the learned counsel for the parties.

2. This Revision Application is directed against the order dated 15th November, 2002, passed by the learned Civil Judge, Junior Division, Malshiras, District Solapur, rejecting the application of the revision applicant (Judgment Debtor No.12) for dismissal of the execution proceedings.

3. The respondents filed a suit against the revision applicant and others for partition, bearing R.C.S.No.507 of 1987, in the Court of Civil Judge, Junior Division, Malshiras for partition of urban property as well as agricultural lands. In the said suit a preliminary decree for partition was passed. The respondents filed an execution petition, bearing Regular Darkhast No.1 of 1992, praying therein that the decree insofar as it related to partition of the agricultural land be sent to the Collector under Section 54 of C.P.C. and for partition of other properties be effected by the Civil Court. The revision applicant, who is the judgment debtor No.12, filed an objection by an application at Exhibit 17 contending therein that he was a minor when the suit was filed and that he was not properly represented and therefore, the decree was not binding on him and could not be executed. By an order dated 15th November, 2002, the executing Court rejected the applications at Exhibit 17 filed by judgment debtor no.12. That order is impugned in this Revision Application.

4. It is true that age of the revision applicant is shown as 17 years in the plaint. The learned counsel for the respondent, however submitted that the revision applicant was represented by his father who was also a defendant in the suit. He further submitted that during the pendency of the suit the judgment debtor no.12 had attained majority and was major when the suit was heard and decided and therefore no prejudice has been caused to him.

He further pointed out that revision applicant had filed an appeal against the decree along with an application for condonation of delay which was bearing Misc. Civil Application No.47 of 1994. By an order dated 15th March, 1996 the Additional District Judge, Pandharpur, has rejected the said application and therefore, the judgment and decree become final. Since the revision applicant had challenged the decree by means of an appeal, it was not open to him to contend that he was not properly represented in the suit and that the decision was not binding on him. I find merit in the submission of the learned counsel for the respondents.

5. Apart from that, it may be noted that the suit was for partition. Judgment Debtor No.10 is father of the revision applicant and head of his branch. In paragraph (iii) of article 313, of his treatise on Hindu Law by Mulla, the learned author has stated who should be the parties to a partition suit. It is stated therein that in a partition suit, plaintiff is required to implead heads of all branches as parties to the suit. Judgment Debtor No.10 is the head of the branch and is father of the revision applicant. He was joined as a party to the suit as the head of the branch and he represented the interest of revision applicant. Revision applicant was thus represented by the head of the branch to which they belonged. In these circumstances the contention of the revision applicant that he was not properly represented cannot be accepted.

6. No other point was urged. For the reasons mentioned above, this Revision Application is dismissed with costs. Interim relief stands vacated.

(D.G.KARNIK, J.)